2000 | appeal commission and medical review panel
ANNUAL REPORT

# ACHIEVING OUR COMMITMENTS

THE APPEAL COMMISSION
THE WORKERS COMPENSATION ACT OF MANITOBA

our mission statement:

to ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the appeal commission are a fair reflection of the facts of the case and governing legislation.

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## appeal commission


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## medical review panels


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# our VALUES

## Quality Assurance

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision making, and accountability, while respecting differing and shared values and perspectives.

## Public Integrity

The Appeal Commission is, and is seen to be, an independent body with integrity and rational decision making process.

## Responsive to Change

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

## Interdependence

All Appeal Commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under The Workers Compensation Act and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of differences and opinions, freedom from bias, a commitment to look for truth and sound decision making.

## Respectful Work Environment

Appeal Commissioners interact with staff and colleagues in a manner that promotes mutual respect as well as clarity and understanding of respective roles.

# INTRODUCTION

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panel (MRP) for the period January 1, 2000 to December 31, 2000 inclusive.

The Appeal Commission is separate and independent from the WCB and is the final level of decision making in the WCB appeal structure. The independence of the Appeal Commission ensures that appeals from workers and employers are heard by an impartial panel with no previous involvement or interest in the matters under appeal.

The Appeal Commission was established by legislative amendment to The Workers Compensation Act (the Act) in July 1990. The amendment created the independent Appeal Commission with exclusive jurisdiction to hear and decide appeals that arise from decisions made by the WCB Review Office or Assessment Review Committee. The Appeal Commission's structure and jurisdiction was maintained following the passage of Bill 59 on January 1, 1992, which implemented major changes to the current Act. The Appeal Commission consists of full and part-time appeal commissioners who are appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under the Act as a separate and independent process from the WCB and the Appeal Commission. The Medical Review Panel provides an independent medical opinion on a worker's claim. A Medical Review Panel can be convened under subsection 67(3) of the Act, where the WCB or Appeal Commission uses its discretion to seek an independent medical opinion. The Act also allows the mandatory convening of a Medical Review Panel under subsection 67(4), where there is a difference of medical opinion between the WCB's medical officer and the worker's physician which affects the worker's entitlement to compensation.

The Minister responsible for the Act appoints the Medical Review Panel Chair and Alternate Chair. Medical Review Panels set their procedures in accordance with the Act. The independence of the Chairs, and the ability of the employer and worker to select physicians with no previous involvement to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar is responsible for providing administrative support to both the Appeal Commission and Medical Review Panels.

# a message from the CHIEF APPEAL COMMISSIONER

I am pleased to present the annual report of the Appeal Commission for the year 2000.

The Appeal Commission is mandated to be the final appeal body for matters under The Workers Compensation Act of Manitoba. In simple terms, this means that persons who are not satisfied with decisions made by the Workers Compensation Board, in respect of their claims, may appeal to the Commission, which is a body independent of the WCB. The Commission has an additional, albeit much smaller role, as the Compensation Appeal Board, pursuant to the Victims' Rights Act.

The Appeal Commission has adopted as its mission to ensure that all parties to an appeal receive a full and impartial hearing. It is to that end that the Commission devotes its energies.

The past year has been one of significant change: we have two new full-time commissioners, a new registrar and two new part-time commissioners.

In July 2000, I was appointed as the new Chief Appeal Commissioner. I bring to the position more than 30 years of experience in both the private and public sectors, an abiding interest in public policy matters, as well as the legal training that is, more and more, becoming necessary in administrative tribunal settings. I look forward to taking on the challenges of this position.

I replaced Deborah Vivian, who had served for the previous 2 1/2 years, during which time she did an excellent job of introducing and/or implementing a number of changes, including internal procedural matters and the move from one location to the current one. This past spring, Deborah was offered and accepted a position with the Manitoba Association of Registered Nurses.

In the summer, the Commission lost its longest-serving commissioner when Rod Frisken resigned, after 10 1/2 years. During those years, Rod worked diligently as the full-time commissioner representing workers. In December, the Minister appointed Margaret Day of the Manitoba Government Employees' Union as Rod's replacement.

**Terry Sargeant**
Chief Appeal Commissioner

On behalf of all of the commissioners and staff, I want to thank Deborah and Rod for their commitment to the Commission and wish them the very best in their new endeavours.

June saw the appointment of a new Registrar, when Peter Wiebe joined the Commission from his previous position as legal counsel in the Office of the Public Trustee. We continue to benefit from the experience of the former Acting Registrar, Roger Lafrance, who remains with the Commission as Assistant Registrar.

There were, as well, two changes among the part-time commissioners in 2000. Linda Butler replaced Marla Niekamp as a workers' representative and Robert Brazell replaced George Tsouras as an employers' representative.

Throughout the year, the Commission remained committed to maintaining and improving its service

# a message from the CHIEF APPEAL COMMISSIONER

delivery. Elsewhere in this report, you will find statistics that detail our performance for the past year. They show that we have been successful in keeping up to the high performance levels that the Commission has achieved over the past few years.

To ensure that we maintain these high standards, the Commission continues to provide a series of professional development seminars, which help to educate commissioners, part and full-time, in a variety of areas of concern to them as adjudicators: from medical problems common to the workplace to decision writing.

The commissioners are further aided in their endeavors by the outstanding support provided by the staff of the Office of the Registrar.

The year 2000 saw continued progress in our efforts to communicate with the public and, especially, with our stakeholder group. In the fall, we published a pamphlet, "What You Need to Know Before Making an Appeal", which explains the process of appealing a decision of the WCB. This pamphlet has been widely distributed throughout the province.

In addition, our website (www.appeal.mb.ca) which was introduced in 1999 is now fully operational. It contains information on just about everything one might want to know about The Appeal Commission, including how to make an appeal, how the process works, as well as application forms for making an appeal. The site also contains the written decisions of all appeals that have come before the Commission since the beginning of 1999. Judging by the number of visits the site gets, we are convinced that this is a valuable endeavour. Further enhancements to the website are planned for 2001.

The year 2000 was yet another exciting and challenging year for the Commission, as well as a year of change. I want to thank all of the commissioners and staff for their diligent work that allowed us to have another successful year. I want to especially thank them for helping me - and the other new commissioners and staff - settle into our positions.

We all look forward to the year 2001.

Sincerely,
Terry Sargeant

# about the APPEAL COMMISSION

In 1990, revisions to the Act [s.s.60.2(1)] established the Appeal Commission as the final level of appeal in the workers' compensation system. The Appeal Commission operates separately and independently from the WCB, and is solely responsible for hearing all appeals from workers and employers concerning WCB Review Office or Assessment Review Committee decisions.

The full and part time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. The Act requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the Act. The Chief Appeal Commissioner is responsible for the operation and conduct of matters relating to the Appeal Commission as established by the Act. Currently, there are two full time presiding officers representing the public interest, including the Chief Appeal Commissioner, and two full time commissioners representing labour and employer interests respectively.

The part-time commissioners are used where a full-time commissioner is in conflict on a case, to manage workloads, for vacation relief and to maintain their level of expertise. As of December 31, 2000, the Appeal Commission had a roster of 14 part-time commissioners with six representing the public interest and four representing workers and employers respectively.

The Appeal Commission's conduct is governed by Regulation 279/91, ***Appeal Commission Rules of Procedure***. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar and the Appeal Panels to ensure that the integrity of the appeal system is protected and maintained.

A panel of three commissioners, representing public, worker and employer interests respectively, hears appeals. The commissioner representing the public interest is the Presiding Officer of the panel and is responsible for the conduct of the hearing/review and panel meetings.

Hearings and reviews are conducted fairly and in accordance with the rules of natural justice and procedural fairness. All parties to an appeal (i.e. the employer, worker and their representatives) are given an equal opportunity to present their case.

**Peter Wiebe**
Registrar

The Appeal Commission is a non-adversarial enquiry forum where parties with a direct interest in a matter provide oral or written evidence. The Appeal Panel has the ability to ask questions or obtain additional evidence, which ensures that the Appeal Panel has all the information necessary to reach a fair decision.

The Appeal Panel may hear witnesses from either or both parties, and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a paper review of the file that would not require the attendance of any party.

The Appeal Commission also acts as the final level of appeal for the claims of victims of crime filed under the provisions of the Criminal Injuries Compensation Act (for claims filed before 1999) and the Victim's Rights and Consequential Amendments Act (for claims filed since 1999).

# method of APPEAL

Appellants can request one of three forums of appeal. However, the Chief Appeal Commissioner has the final authority to determine the most appropriate forum for an appeal.

## Non-Oral File Review

An appeal can be decided by a file review if all the issues are easy to understand from the file documents. The panel reaches a decision after it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a non-oral file review, interested parties do not have to appear in person before the Appeal Panel. Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment where no wage loss is involved
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute

## Standard Oral Hearing

Standard oral hearings are the most common appeal forum. If the appeal is more complex, it will probably be decided by an oral hearing. In this method the parties must appear in person at the hearing. At the hearing, parties present the appeal to the panel erbally. The appeal can be supported by a written submission. Witnesses may attend in support of the appeal. However, the Appeal Commission must be advised if witnesses will be attending. Some examples of appeals commonly decided by a standard oral hearing are:

- where additional evidence is to be presented
- where there is a fatality
- where serious injury has occurred
- where an occupational disease is involved
- where the decision may have an important impact on how WCB policy is interpreted or applied
- where the facts are in dispute or credibility is an issue

## Expedited Oral Hearing

Occasionally, oral hearings may be expedited. This means that a decision is given immediately following the hearing and written reasons are provided at a later date. In this method the parties must appear in person at the hearing to present their appeal. Some examples of appeals decided by an expedited oral hearing are:

- where the Appeal Panel feels an immediate decision is necessary
- where no additional evidence is required by the panel
- applications for periods of retroactive benefits, where the claimant has returned to work

## General Hearing/Review Information

- Hearings and reviews are scheduled as soon as parties are fully prepared to proceed.
- Hearings are not generally open to the public unless permission is obtained from all parties.
- A client's access to their file information is governed by subsection 101(1.1) of the Act, and the employer's access is governed by subsection 101(1.2). File access generally takes up to six weeks, but can take longer if objections to the release of information are received.
- Any written evidence concerning an appeal must be provided to the Registrar no later than five business days before the file review or hearing.
- A court reporter records the proceeding at all oral hearings. After the hearing, a transcript is produced and becomes part of the file record.
- The Appeal Commission provides interpreter services free of charge.
- Any appeal made on frivolous grounds may be subject to a fine under subsection 60(8.7) of the Act.
- Pursuant to Regulation 279/91, ***The Appeal Commission Rules of Procedure***, a decision of a panel shall be rendered within 60 days of the completion of the file review or hearing.

## After An Appeal

The Appeal Commission cannot amend, clarify or change its decision once it has been rendered. This

means that once a decision is made, the panel cannot provide further reasons, clarification or explanations for its decision. As well, the panel cannot consider further arguments or submissions by the parties to the appeal once a decision has been made.

The Act provides two limited options for reconsideration of an Appeal Panel decision.

Under Section 60.9 of the Act, if a party to an appeal feels the panel has acted outside its authority or has erred in applying Workers' Compensation Legislation, Policy or Regulations, the party can approach the WCB Board of Directors. The party must identify the alleged error made by the panel. If the Board of Directors determines that an error has been made, the Board can stay or set aside the decision and order that the case be re-heard. The Board of Directors is unable to set aside a decision of the Appeal Commision if it has acted within its jurisdiction.

Under subsection 60.91(1) of the Act, if a party with a direct interest in a panel's decision acquires new evidence after the hearing, the party may apply to the Chief Appeal Commissioner to request reconsideration of the previous decision. If the Chief Appeal Commissioner decides that the evidence meets the requirements of the Act, a new hearing on the matter is ordered. The Chief Appeal Commissioner does not have a general power of reconsideration and is unable to consider further arguments about the evidence that was before the original panel.

## Nature of New Evidence

Subsection 60.91(2) describes the nature of the evidence and states:

The Chief Appeal Commissioner may direct the Appeal Commission to reconsider its previous decision where the Chief Appeal Commissioner considers that the evidence referred to in subsection (1) is substantial and material to the decision, and

(a) did not exist at the time of the previous hearing before the appeal commission, or

(b) was not known to the applicant at the time of the previous hearing before the appeal commission and could not have been discovered through the exercise of due diligence.

# about the FULL-TIME APPEAL COMMISSIONERS

left to right:

*Margaret Day*
Appeal Commissioner (Workers)

*Robert MacNeil*
Presiding Officer (Public Interest)

*Terry Sargeant*
Chief Appeal Commissioner (Public Interest)

*Allan Finkel*
Appeal Commissioner (Employers)

The Chief Appeal Commissioner and full and part time Commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

There are currently four full time Commissioners.

# about the PART-TIME APPEAL COMMISSIONERS

**Current Roster**

**Public Interest**
Kaye Dunlop, Q.C.
Roger Cathcart
Wendel McConnell
Patrick McCullough
Bernie Campeau
Deborah Vivian

**Representing Workers**
Chris Monk
Bob Malazdrewich
Bill Leake
Linda Butler

**Representing Employers**
Paul Challoner
Edna Krosney
Herb Middlestead
Robert Brazzell

**Back Row** - Edna Krosney, Kaye Dunlop, Bernie Campeau, Robert Brazzell, Paul Challoner
**Front Row** - Linda Butler, Chris Monk, Deborah Vivian

As of December 31, 2000, the Appeal Commission had a roster of 14 part-time appeal commissioners, six representing the public interest and four representing workers and employers respectively. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase and to maintain their level of expertise.

The Appeal Commission would like to thank Marla Niekamp and George Tsouras, both of whom ceased to be part-time appeal commissioners, for their dedicated service and contribution to the Appeal Commission.

The Appeal Commission would also like to extend a welcome to Linda Butler and Robert Brazzell, both of whom were recently appointed as part-time appeal commissioners.

# office of the REGISTRAR STAFF

**The administrative staff supports both the Appeal Commission and Medical Review Panels.**

**Back Row** - Marg Semler (Scheduling Coordinator),
Bonnie Miller (Recording Secretary),
Dr. Brian Onoferson (Medical Advisor),
Peter Wiebe (Registrar),
Stephanie Michalow (Photocopy Clerk)

**Front Row** - Diane Daignault (Office Administrator),
Roger Lafrance (Assistant Registrar),
Phyllis Kastalanych (Administrative Assistant MRP)

# 2000 HIGHLIGHTS

- Mr. Terry Sargeant was appointed as Chief Appeal Commissioner in July 2000.
- Mr. Robert Brazzell was appointed as a part-time appeal commissioner representing employers in June 2000.
- Ms. Linda Butler was appointed as a part-time appeal commissioner representing workers in June 2000.
- In December 2000, Ms. Margaret Day was appointed as a full-time appeal commissioner representing workers. Ms. Day commenced her duties with the Appeal Commission effective January 2, 2001.
- Mr. Peter Wiebe was hired as the Registrar, Office of the Registrar, in June 2000.
- The Appeal Commission produced and published a pamphlet, "What You Need to Know Before Making an Appeal", which explains the process of appealing a decision of the WCB.
- In 2000, two previous Appeal Commission decisions were set aside by the WCB Board of Directors under Section 60.9 of the Act.
- There was a substantial increase in the number of applications submitted pursuant to ss. 68(4) of the Act. This section deals with the determination of whether or not a worker's right of action is removed by the Act.

# commissioner WORKSHOPS (continuing education)

Full and part-time appeal commissioners attend workshops throughout the year on topics related to workers compensation and administrative tribunals. As part of their training, workshops were held in 2000 on:

- Chronic Pain
- Fibromyalgia / Myofascial Pain
- Shoulders
- Knees
- Cardiac & Respiratory Systems
- Decision Writing

In addition to the above workshops, the full time commissioners participated in the following external training:

- The Association of Workers Compensation Boards' of Canada Annual College (QC)
- International Association of Industrial Accident Boards and Commissions Annual Compensation College (AZ)
- The Association of Workers Compensation Boards' of Canada Annual Congress (PEI)
- The 2000 International Conference of the Council of Canadian Administrative Tribunals (ON)

*Excludes Criminal Injuries/Victims' Rights appeals

***TOTAL APPEALS***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Panel hearings held (by appeal) | 115 | 116 | 127 |
| Cases in process | (33) | (20) | (40) |
| **TOTAL APPEALS DECIDED** | **132** | **186** | **185** |
| Appeals accepted | 43 | 57 | 42 |
| Appeals not accepted | 78 | 112 | 124 |
| Percentage accepted | 32.6% | 30.7% | 22.7% |
| Percentage not accepted | 59.1% | 60.2% | 67.0% |

***POST HEARING ACTIVITIES***
***cases in process***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Cases awaiting decision | 3 | 3 | 7 |
| **TOTAL CASES IN PROCESS** | **33** | **20** | **40** |

# appeal commission STATISTICS

## TOTAL CLAIMANT APPEALS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals accepted | 79 | 96 | 97 |
| Appeals partially accepted | 11 | 17 | 17 |
| Appeals not accepted | 37 | 47 | 46 |
| **TOTAL CLAIMANT APPEALS** | **116** | **160** | **160** |
| Percentage accepted | 68.1% | 71.3% | 71.3% |
| Percentage partially accepted | 9.5% | 10.6% | 10.6% |
| Percentage not accepted | 31.9% | 28.1% | 28.1% |
| Number of Claimants Represented by: | | | |
| Legal Counsel | 13 | 27 | 19 |
| Union Representative | 33 | 39 | 25 |
| Worker Advisor | 24 | 38 | 52 |
| Advocate | 7 | 10 | 11 |
| Self Representation | 37 | 39 | 47 |
| Other | 2 | 7 | 5 |
| **TOTAL** | **116** | **160** | **160** |

## TOTAL EMPLOYER APPEALS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals accepted | 5 | 7 | 5 |
| Appeals partially accepted | 0 | 0 | 2 |
| Appeals not accepted | 11 | 19 | 18 |
| **TOTAL EMPLOYER APPEALS** | **16** | **26** | **25** |
| Percentage accepted | 31.25% | 26.9% | 28.0% |
| Percentage partially accepted | 0% | 0% | 8.0% |
| Percentage not accepted | 68.75% | 73.1% | 72.0% |
| Number of Employers Represented by: | | | |
| Legal Counsel | 1 | 0 | 0 |
| Advocate | 0 | 7 | 8 |
| Employer Agent | 11 | 14 | 13 |
| Self Representation | 4 | 5 | 4 |
| **TOTAL** | **16** | **26** | **25** |

*Excludes Criminal Injuries/Victims' Rights appeals

***TOTAL APPEALS***

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Appeals carried forward from previous year | 20 | 40 | 35 |
| Panel hearings held (by appeal) | 115 | 116 | 127 |
| Panel reviews held (by appeal) | 36 | 56 | 72 |
| Cases in process | (33) | (20) | (40) |
| Cases adjourned | (6) | (6) | (9) |
| **TOTAL APPEALS DECIDED** | **132** | **186** | **185** |
| | | | |
| Appeals accepted | 43 | 57 | 42 |
| Appeals partially accepted | 11 | 17 | 19 |
| Appeals not accepted | 78 | 112 | 124 |
| **TOTAL APPEALS DECIDED** | **132** | **186** | **185** |
| Percentage accepted | 32.6% | 30.7% | 22.7% |
| Percentage partially accepted | 8.3% | 9.1% | 10.3% |
| Percentage not accepted | 59.1% | 60.2% | 67.0% |

***POST HEARING ACTIVITIES***
***cases in process***

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Cases awaiting further information requested by the Panel | 12 | 13 | 13 |
| Cases awaiting decision | 3 | 3 | 7 |
| Cases decided but not communicated | 18 | 4 | 20 |
| **TOTAL CASES IN PROCESS** | **33** | **20** | **40** |

# appeal commission STATISTICS

## TOTAL CLAIMANT APPEALS

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Appeals accepted | 38 | 50 | 37 |
| Appeals partially accepted | 11 | 17 | 17 |
| Appeals not accepted | 67 | 93 | 106 |
| **TOTAL CLAIMANT APPEALS** | **116** | **160** | **160** |
| Percentage accepted | 32.8% | 31.3% | 23.1% |
| Percentage partially accepted | 9.5% | 10.6% | 10.6% |
| Percentage not accepted | 57.7% | 58.1% | 66.3% |
| | | | |
| **Number of Claimants Represented by:** | | | |
| Legal Counsel | 13 | 27 | 19 |
| Union Representative | 33 | 39 | 23 |
| Worker Advisor | 24 | 38 | 52 |
| Advocates | 7 | 16 | 14 |
| Self Representation | 37 | 39 | 47 |
| Other | 2 | 1 | 5 |
| TOTAL | 116 | 160 | 160 |

## TOTAL EMPLOYER APPEALS

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Appeals accepted | 5 | 7 | 5 |
| Appeals partially accepted | 0 | 0 | 2 |
| Appeals not accepted | 11 | 19 | 18 |
| **TOTAL EMPLOYER APPEALS** | **16** | **26** | **25** |
| Percentage accepted | 31.25% | 26.9% | 20.0% |
| Percentage partially accepted | 0% | 0% | 8.0% |
| Percentage not accepted | 68.75% | 73.1% | 72.0% |
| | | | |
| **Number of Employers Represented by:** | | | |
| Legal Counsel | 1 | 0 | 0 |
| Advocate | 0 | 7 | 8 |
| Employer Agent | 11 | 14 | 13 |
| Self Representation | 4 | 5 | 4 |
| TOTAL | 16 | 26 | 25 |

***BREAKDOWN OF EMPLOYER APPEALS TO CLAIMS/REHABILITATION ISSUES BY DECISION:***

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Appeals accepted | 3 | 6 | 3 |
| Appeals partially accepted | 0 | 0 | 2 |
| Appeals not accepted | 9 | 15 | 17 |
| TOTAL | 12 | 21 | 22 |
| Percentage accepted | 25.0% | 28.6% | 13.6% |
| Percentage partially accepted | 0% | 0% | 9.1% |
| Percentage not accepted | 75.0% | 71.4% | 77.3% |

***BREAKDOWN OF EMPLOYER APPEALS TO ASSESSMENT ISSUES***

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Appeals accepted | 2 | 1 | 2 |
| Appeals partially accepted | 0 | 0 | 0 |
| Appeals not accepted | 2 | 4 | 1 |
| TOTAL | 4 | 5 | 3 |
| Percentage accepted | 50.0% | 20.0% | 66.7% |
| Percentage partially accepted | 0% | 0% | 0% |
| Percentage not accepted | 50.0% | 80.0% | 33.3% |

## TOTAL APPEALS BY CASE TYPE

### CLAIMS

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Appeals accepted | 39 | 52 | 37 |
| Appeals partially accepted | 10 | 16 | 19 |
| Appeals not accepted | 72 | 103 | 117 |
| TOTAL | 121 | 171 | 173 |
| Percentage accepted | 32.2% | 30.4% | 21.4% |
| Percentage partially accepted | 8.3% | 9.4% | 11.0% |
| Percentage not accepted | 59.5% | 60.2% | 67.6% |

### REHABILITATION

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Appeals accepted | 2 | 4 | 3 |
| Appeals partially accepted | 1 | 1 | 0 |
| Appeals not accepted | 4 | 5 | 6 |
| TOTAL | 7 | 10 | 9 |
| Percentage accepted | 28.6% | 40.0% | 33.3% |
| Percentage partially accepted | 14.3% | 10.0% | 0% |
| Percentage not accepted | 57.1% | 50.0% | 66.7% |

### ASSESSMENTS

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Appeals accepted | 2 | 1 | 2 |
| Appeals partially accepted | 0 | 0 | 0 |
| Appeals not accepted | 2 | 4 | 1 |
| TOTAL | 4 | 5 | 3 |
| Percentage accepted | 50.0% | 20.0% | 66.7% |
| Percentage partially accepted | 0% | 0% | 0% |
| Percentage not accepted | 50.0% | 80.0% | 33.3% |

| | | | |
|---|---|---|---|
| TOTAL CASES DECIDED | 132 | 186 | 185 |

***BREAKDOWN OF EMPLOYER APPEALS TO CLAIMS/REHABILITATION ISSUES BY DECISION:***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals partially accepted | 0 | 0 | 2 |
| **TOTAL** | **12** | **21** | **22** |
| Percentage partially accepted | 0% | 0% | 9.1% |

***BREAKDOWN OF EMPLOYER APPEALS TO ASSESSMENT ISSUES***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals partially accepted | 0 | 0 | 0 |
| **TOTAL** | **4** | **5** | **3** |
| Percentage partially accepted | 0% | 0% | 0% |

## TOTAL APPEALS BY CASE TYPE

### CLAIMS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals accepted | 39 | 52 | 37 |
| Appeals partially accepted | 10 | 16 | 19 |
| Appeals not accepted | 72 | 103 | 117 |
| **TOTAL** | **121** | **171** | **173** |
| Percentage accepted | 32.2% | 30.4% | 21.4% |
| Percentage partially accepted | 8.3% | 9.4% | 11.0% |
| Percentage not accepted | 59.5% | 60.2% | 67.6% |

### REHABILITATION

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals accepted | 2 | 4 | 3 |
| Appeals partially accepted | 1 | 1 | 0 |
| Appeals not accepted | 4 | 5 | 6 |
| **TOTAL** | **7** | **10** | **9** |
| Percentage accepted | 28.6% | 40.0% | 33.3% |
| Percentage partially accepted | 14.3% | 10.0% | 0% |
| Percentage not accepted | 57.1% | 50.0% | 66.7% |

### ASSESSMENTS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Appeals accepted | 2 | 1 | 2 |
| Appeals partially accepted | 0 | 0 | 0 |
| Appeals not accepted | 2 | 4 | 1 |
| **TOTAL** | **4** | **5** | **3** |
| Percentage accepted | 50.0% | 20.0% | 66.7% |
| Percentage partially accepted | 0% | 0% | 0% |
| Percentage not accepted | 50.0% | 80.0% | 33.3% |

| | | | |
|---|---|---|---|
| **TOTAL CASES DECIDED** | **132** | **186** | **185** |

### *RECONSIDERATIONS UNDER SECTION 60.91 OF THE ACT*

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] |
| Reconsiderations granted | 2 | 0 | 0 |
| [illegible] | [illegible] | [illegible] | [illegible] |

### *FILE ACCESS APPEALS*

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] |
| Employer appeals | 4 | 0 | N/A |
| [illegible] | [illegible] | [illegible] | [illegible] |

*Tracking of this statistic commenced in 1999

### *CRIMINAL INJURIES/VICTIMS*

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] |
| Appeals partially accepted | 0 | 0 | 1 |
| [illegible] | [illegible] | [illegible] | [illegible] |
| **TOTAL APPEALS** | **6** | **1** | **4** |
| [illegible] | [illegible] | [illegible] | [illegible] |
| Percentage partially accepted | 0% | 0% | 25.0% |
| [illegible] | [illegible] | [illegible] | [illegible] |

# appeal commission STATISTICS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| TOTAL ISSUES ADDRESSED | 198 | 309 | 340 |

***MOST COMMON ISSUES ADDRESSED***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Entitlement to wage loss benefits (post 1992) | 35 | 67 | 69 |
| Claim acceptance | 24 | 41 | 33 |
| Is present condition related to the compensable injury | 14 | 36 | 34 |
| Has claimant recovered from the compensable injury | 13 | 12 | 23 |
| Entitlement to temporary total disability benefits (pre 1992) | 11 | 14 | 18 |
| Request for a Medical Review Panel | 10 | 15 | 17 |
| Entitlement to medical aid payments | 8 | 4 | 11 |
| Average earnings | 5 | 2 | 4 |
| Entitlement to full rehabilitation benefits and services | 4 | 10 | 10 |
| Entitlement to a permanent partial impairment (PPI) award | 4 | 5 | 5 |
| Entitlement to an increase in the PPI | 4 | 3 | 6 |
| Has claimant been overpaid benefits | 4 | 3 | 6 |
| Are the PPI calculations correct | 4 | 3 | 3 |
| Deeming process | 3 | 0 | 2 |
| Are the physical restrictions related to the compensable injury | 3 | 1 | 4 |
| Recurrence of injuries | 3 | 0 | 3 |
| Should responsibility for surgery be accepted | 3 | 1 | 2 |
| Entitlement to a lump sum settlement of the PPI | 2 | 0 | 0 |
| Should responsibility be accepted for the payment of ongoing chiropractic treatment | 2 | 0 | 0 |
| Entitlement to preventive rehabilitation | 2 | 0 | 2 |

## *RECONSIDERATIONS UNDER SECTION 60.91 OF THE ACT*

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Number of requests received | 18 | 29 | 44 |
| Reconsiderations granted | 2 | 0 | 0 |
| Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate | 0 | 2 | 0 |

## *FILE ACCESS APPEALS*

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Claimant appeals | 3 | 8 | N/A |
| Employer appeals | 4 | 0 | N/A |
| **TOTAL FILE ACCESS APPEALS** | **7** | **8** | **N/A** |

*Tracking of this statistic commenced in 1999

## *CRIMINAL INJURIES/VICTIMS*

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| Appeals accepted | 3 | 0 | 1 |
| Appeals partially accepted | 0 | 0 | 1 |
| Appeals not accepted | 3 | 1 | 2 |
| **TOTAL APPEALS** | **6** | **1** | **4** |
| Percentage accepted | 50.0% | 0% | 25.0% |
| Percentage partially accepted | 0% | 0% | 25.0% |
| Percentage not accepted | 50.0% | 100% | 50.0% |

# appeal commission STATISTICS

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| **TOTAL ISSUES ADDRESSED** | **198** | **300** | **348** |

| ***MOST COMMON ISSUES ADDRESSED*** | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| **Entitlement to wage loss benefits (post 1992)** | 53 | 87 | 89 |
| Claim acceptance | 24 | 41 | 33 |
| **Is present condition related to the compensable injury** | 14 | 36 | 34 |
| Has claimant recovered from the compensable injury | 13 | 12 | 23 |
| **Entitlement to temporary total disability benefits (pre 1992)** | 11 | 14 | 18 |
| Request for a Medical Review Panel | 10 | 15 | 17 |
| **Entitlement to medical aid payment** | 8 | 4 | 11 |
| Average earnings | 5 | 2 | 4 |
| **Entitlement to full rehabilitation benefits and services** | 4 | 10 | 10 |
| Entitlement to a permanent partial impairment (PPI) award | 4 | 5 | 5 |
| **Entitlement to an increase in the PPI** | 4 | 3 | 6 |
| Has claimant been overpaid benefits | 4 | 3 | 6 |
| **Are the PPI calculations correct** | 4 | 3 | 3 |
| Deeming process | 3 | 0 | 2 |
| **Are the physical restrictions related to the compensable injury** | 3 | 1 | 4 |
| Recurrence of injuries | 3 | 0 | 3 |
| **Should responsibility for surgery be accepted** | 3 | 1 | 2 |
| Entitlement to a lump sum settlement of the PPI | 2 | 0 | 0 |
| **Should responsibility be accepted for the payment of ongoing chiropractic treatment** | 2 | 0 | 0 |
| Entitlement to preventive rehabilitation | 2 | 0 | 2 |

# SERVICE LEVELS

The Service Level Report was instituted in 1997. This tracking system allows the Office of the Registrar to review the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.

The Appeal Commission personally contacts all interested parties with respect to the scheduling of hearings. Historically, the Appeal Commission has been able to schedule a hearing or review within six weeks of receiving an appeal. However, it was found that this does not allow sufficient time for the parties to fully prepare.

According to Regulation, an Appeal Panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

Based on decisions published as of December 31, 2000

| | year ending 2000 | year ending 1999 | year ending 1998 |
|---|---|---|---|
| **Average time from date appeal received to date of hearing** | **10.51 wks** | **9.64 wks** | **9.62 wks** |
| Average time from hearing date to decision published | 10.38 wks | 9.24 wks | 8.98 wks |
| **Average time from date of decision to decision published** | **3.84 wks** | **4.63 wks** | **4.25 wks** |
| **TOTAL TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*** | **20.89 wks** | **18.88 wks** | **18.60 wks** |

*Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.

# SERVICE LEVELS

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Based on decisions published as of December 31, 2000

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| [illegible] | [illegible] | [illegible] | [illegible] |
| Average time from hearing date to decision published | 10.38 wks | 9.24 wks | 8.98 wks |
| [illegible] | [illegible] | [illegible] | [illegible] |
| **TOTAL TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*** | **20.89 wks** | **18.88 wks** | **18.60 wks** |

*Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.

# about MEDICAL REVIEW PANELS

**Dr. C. H. Murphy**

**Medical Review Panel, Chairperson**

Medical Review Panels enable the WCB or Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the Act allows the WCB or Appeal Commission the discretion to refer a medical matter to a Medical Review Panel for an independent opinion.

Subsection 67(4) of the Act establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical officer, which affects entitlement to compensation. This provision mandates the convening of a Medical Review Panel if a difference of opinion, as defined by subsection 67(1) of the Act, exists.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the Act appoints the Chairperson and the alternate Chairperson. The worker and employer select the other two panel members from a list of physicians provided by the College of Physicians and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer, or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

**Dr. Mallory Fast**

**Medical Review Panel, Alternate Chairperson**

## MEDICAL REVIEW STATISTICS

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| MRP's Awaiting Scheduling | 8 | 6 | 9 |
| **INITIATED BY** | | | |
| Review Office | 9 | 8 | 27 |
| Subsection 67(3) | 5 | 18 | 18 |

## MEDICAL REVIEW PANELS CONVENED BY AREA OF MEDICAL SPECIALTY

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Neurology | 3 | 4 | 7 |
| Orthopaedic Surgery | 22 | 25 | 36 |
| Physical Medicine & Rehabilitation/Psychiatry | 1 | 0 | 0 |
| Psychiatry | 1 | 1 | 0 |
| Vascular Surgery | 1 | 0 | 0 |
| Ophthalmology | 0 | 1 | 0 |
| Rheumatology | 0 | 1 | 1 |
| Cardiology | 0 | 0 | 3 |
| Respiratory Medicine/Occupational Medicine | 0 | 0 | 1 |

# medical review panel SERVICE LEVELS

The scheduling of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

The Medical Review Panel Reporting System [MRPRS] was first implemented in 1996 and underwent significant enhancements in 1999. Further enhancements are anticipated for 2001. The MRPRS captures specific data, allowing the Office of the Registrar to track a case through the various stages of the process.

***SERVICE LEVEL STATISTICS***

| | 2000 | 1999 | 1998 |
|---|---|---|---|
| Average time from date of MRP to date when report is published | 6.41 wks | 5.25 wks | 4.1 wks |

# medical review panel STATISTICS

## MEDICAL REVIEW STATISTICS

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Total MRP's Convened | 39 | 40 | 50 |
| MRP's Awaiting Scheduling | 8 | 6 | 9 |
| **INITIATED BY** | | | |
| Primary Adjudication | 28 | 25 | 18 |
| Review Office | 9 | 8 | 27 |
| Appeal Commission | 2 | 7 | 5 |
| **CONVENED UNDER** | | | |
| Subsection 67(3) | 5 | 18 | 18 |
| Subsection 67(4) | 34 | 22 | 32 |

## MEDICAL REVIEW PANELS CONVENED BY AREA OF MEDICAL SPECIALTY

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| Clinical Immunology & Allergy | 1 | 0 | 0 |
| Neurology | 3 | 4 | 7 |
| Neurosurgery/Orthopaedic Surgery | 1 | 0 | 0 |
| Orthopaedic Surgery | 22 | 25 | 36 |
| Physical Medicine & Rehabilitation | 6 | 4 | 1 |
| Physical Medicine & Rehabilitation/Psychiatry | 1 | 0 | 0 |
| Plastic Surgery | 2 | 0 | 0 |
| Psychiatry | 1 | 1 | 0 |
| Respiratory Medicine | 1 | 1 | 0 |
| Vascular Surgery | 1 | 0 | 0 |
| Medical Oncology | 0 | 1 | 0 |
| Ophthalmology | 0 | 1 | 0 |
| Orthopedic Surgery/Psychiatry | 0 | 1 | 0 |
| Rheumatology | 0 | 1 | 1 |
| Urology | 0 | 1 | 0 |
| Cardiology | 0 | 0 | 3 |
| Neurosurgery | 0 | 0 | 1 |
| Respiratory Medicine/Occupational Medicine | 0 | 0 | 1 |
| TOTALS | 39 | 40 | 50 |

# medical review panel SERVICE LEVELS

The scheduling of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

The Medical Review Panel Reporting System [MRPRS] was first implemented in 1996 and underwent significant enhancements in 1999. Further enhancements are anticipated for 2001. The MRPRS captures specific data, allowing the Office of the Registrar to track a case through the various stages of the process.

***SERVICE LEVEL STATISTICS***

| | Year ending 2000 | Year ending 1999 | Year ending 1998 |
|---|---|---|---|
| **Average time from date of request to date MRP held** | **17.12 wks** | **13.8 wks** | **12.53 wks** |
| Average time from date of MRP to date when report is published | 6.41 wks | 5.25 wks | 4.1 wks |
| **Average time from date of request to when report is published** | **23.53 wks** | **19.04 wks** | **16.32 wks** |